

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Escrow Agent License of:

No. 10F-BD044-BNK

3 **NEW LAND TITLE AGENCY, L.L.C. AND**  
4 **MICHAEL P. KEHOE, PRESIDENT**  
5 1910 South Stapley Drive, Suite 236  
Mesa, Arizona 85204

**NOTICE OF HEARING**

6 Petitioners.

7 PLEASE TAKE NOTICE that, pursuant to the Arizona Revised Statutes ("A.R.S.") §§ 6-137, 6-  
8 138 and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative  
9 Hearings, an independent agency, and is scheduled for November 2, 2010 at 8:00 a.m., at the Office of  
10 Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the  
11 "Hearing").

12 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order  
13 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to  
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions, (2)  
16 the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation  
17 of Petitioners' license pursuant to A.R.S. § 6-817; (4) an order to pay restitution of any fees earned in  
18 violation of A.R.S. § 6-801, *et seq.*, pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or  
19 any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
20 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

21 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona  
22 (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or  
23 expressed, to the Director of the Office of Administrative Hearings or the Director's designee to preside  
24 over the Hearing as the Administrative Law Judge, to make written recommendations to the  
25 Superintendent consisting of proposed Findings of Fact, Conclusions of Law and Order. The Office of  
26 Administrative Hearings has designated Lewis Kowal, at the address and phone number listed above, as  
the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative Code

1 ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the Superintendent retains  
2 authority to enter orders granting a stay, orders on motions for rehearing, final decisions pursuant to  
3 A.R.S. § 41-1092.08 or other order or process which the Administrative Law Judge is specifically  
4 prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue shall  
7 be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable  
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence and  
12 witnesses in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge  
13 to compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B), any  
14 person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be made  
16 by a court reporter or by electronic means. Any party that requests a transcript of the proceedings shall  
17 pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
19 Attorney General Erin O. Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona 85007.

#### 20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions  
24 before the Superintendent. The Hearing will be conducted pursuant to these rules and the rules  
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through R2-19-  
26 122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20) days**  
2 after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position or  
3 defense and shall specifically admit or deny each of the assertions contained in this Notice of Hearing.  
4 If the answering Petitioners are without or are unable to reasonably obtain knowledge or information  
5 sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which shall have the  
6 effect of a denial. Any assertion not denied is deemed admitted. When Petitioners intend to deny only a  
7 part or qualification of an assertion, or to qualify an assertion, Petitioners shall expressly admit so much  
8 of it as is true and shall deny the remainder. Any defense not raised in the answer is deemed waived.

9 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**  
10 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as true  
11 and admitted and the Superintendent may take whatever action is appropriate, including suspension,  
12 revocation, denial of Petitioners' license or affirming an order to Cease and Desist and imposition of a  
13 civil penalty or restitution to any injured party.

14 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial  
15 Institutions, 2910 North 44<sup>th</sup> Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or delivered  
16 to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona 85007  
17 and to Assistant Attorney General Erin O. Gallagher, Consumer Protection & Advocacy Section,  
18 Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

19 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
20 **alternative format or assistance with physical accessibility.** Requests for accommodations must be  
21 made as early as possible to allow time to arrange the accommodations. If accommodations are  
22 required, call the Office of Administrative Hearings at (602) 542-9826.

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## COMPLAINT

1. Petitioner New Land Title Agency, L.L.C. ("New Land") is an Arizona limited liability company that is authorized to transact business in Arizona as an escrow agent, license number EA 0910075, within the meaning of A.R.S. §§ 6-801, *et seq.* The nature of New Land's business is that of an escrow agent, within the meaning of A.R.S. § 6-801(5).

2. Petitioner Michael P. Kehoe ("Mr. Kehoe") is the President of New Land. Mr. Kehoe is authorized to transact business in Arizona as an escrow agent within the meaning of A.R.S. §§ 6-801, *et seq.*

3. An examination of Petitioners conducted by the Department, from July 1 to July 14, 2009 revealed that Petitioners:

a. Failed to authorize Bank of America to notify the Superintendent of any overdrafts or checks returned for insufficient funds in any trust accounts of the escrow agent, specifically, the account ending #3119 did not have the proper authorization until it was provided during the examination;

b. Commingled corporate funds belonging to the licensee with escrow trust funds, specifically:

i. Petitioners opened their trust account with a deposit of then thousand dollars (\$10,000.00) to Bank of America. This money was in the account from July 24, 2008 until some time during the examination;

c. Failed to provide complete and adequate escrow trial balance detail. The escrow trial balance was missing both the opening and closing dates;

d. Failed to provide each depositing buyer, within three (3) business days after receipt of deposited escrow monies, the notice of their right to earn interest on all monies deposited into the escrow;

- 1 e. Failed to adequately disclose to the buyer and seller of a residential dwelling, not  
2 later than three (3) business days after receipt of any funds, that monies deposited  
3 in an escrow account are not insured against loss from fraud or theft, by this state  
4 or the United States government;
- 5 f. Failed to file escrow rates and have them approved by the Superintendent; and
- 6 g. Failed to provide the Department with any documentation that any local audit was  
7 ever done. Specifically, Petitioners provided the Department's examiners with  
8 the 12-31-08 CPA annual audit of the parent company and an unsigned copy of an  
9 engagement letter with a local CPA firm which was to audit the local escrow  
10 account activities and follow generally accepted accounting principles. The scope  
11 of the audit included consideration of the company's internal control structure in  
12 accordance with generally accepted auditing standards. The audit was to have  
13 begun on February 20, 2009. Local management conveyed to the examiners that  
14 the CFO of the parent company was fired and he was responsible for both the rate  
15 filings and the local CPA audit engagement.

16 5. Based on the above findings, on March 25, 2010, the Department issued and served upon  
17 Petitioners an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order  
18 ("Cease and Desist Order").

19 6. On April 12, 2010, the Department received Petitioners' request for a hearing to appeal  
20 the Cease and Desist Order.

#### 21 LAW

22 1. Pursuant to A.R.S. §§ 6-801, *et seq.*, the Superintendent has the authority and duty to  
23 regulate all persons engaged in the escrow agent business and with the enforcement of statutes, rules and  
24 regulations relating to escrow agents.

25 2. By the conduct set forth in the Complaint, New Land Title Agency, L.L.C. and Mr. Kehoe  
26 have violated the following:

- a. A.R.S. § 6-817(A)(14), by failing to authorize Bank of America to notify the Superintendent of any overdrafts or returned checks for insufficient funds in any trust accounts of the escrow agent, specifically, the account ending in #3119;
- b. A.R.S. §§ 6-834(A), 6-834(B) and 6-841.01(A), by commingling corporate funds belonging to the licensee with escrow trust funds;
- c. A.R.S. §§ 6-834(A) and 6-841, A.A.C. R20-4-702 and A.A.C. R20-4-704, by failing to provide complete and adequate trial balance detail;
- d. A.R.S. § 6-834(D), by failing to provide to each depositing buyer, within three (3) business days after receipt of deposited monies, the notice of their right to earn interest on all monies deposited into the escrow;
- e. A.R.S. § 6-841.03, by failing to adequately disclose to the buyer and seller of a residential dwelling, not later than three (3) business days after receipt of any funds, that monies deposited in an escrow account are not insured against loss from fraud or theft, by this state or the United States government;
- f. A.R.S. §§ 6-841(A) and 6-841.01(A) and A.A.C. R20-4-702, by failing to file escrow rates and have them approved by the Superintendent; and
- g. A.R.S. § 6-832, by failing to provide any documentation that any local audit was ever done.

3. The violations set forth above constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-817; (4) an order to pay restitution of any fees earned in violation of A.R.S. §§ 6-801, *et seq.*, pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or

1 any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
2 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

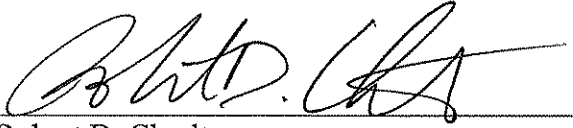
3 4. Pursuant to A.R.S. § 6-132, Petitioners' violations of the aforementioned statutes are  
4 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each  
5 day.

6 5. Pursuant to A.R.S. § 6-125, Petitioners shall be assessed an examination fee in the  
7 amount of **three thousand, one hundred twenty dollars (\$3,120.00)**, pursuant to A.R.S. § 6-122(B),  
8 plus any applicable late fees pursuant to A.R.S. § 6-125(D).

9 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the  
10 above-described violations, the Superintendent may order Petitioners to cease and desist from the  
11 violative conduct and take the appropriate affirmative actions pursuant to A.R.S. § 6-137; impose a civil  
12 money penalty pursuant to A.R.S. § 6-132; suspend or revoke Petitioners' license pursuant to A.R.S. §  
13 6-817; order payment of restitution of any fees earned in violation of A.R.S. §§ 6-801, *et seq.*, pursuant  
14 to A.R.S. §§ 6-131(A)(3) and 6-137; and order any other remedy necessary or proper for the  
15 enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-131.

16 SO ORDERED this 24<sup>th</sup> day of June, 2010.

17 Lauren W. Kingry  
18 Superintendent of Financial Institutions

19   
20 Robert D. Charlton  
21 Assistant Superintendent of Financial Institutions  
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1 **ORIGINAL** of the foregoing filed  
2 this 24<sup>th</sup> day of June, 2010 with:

3 Lauren W. Kingry  
4 Superintendent of Financial Institutions  
5 Arizona Department of Financial Institutions  
6 Attention: Susan Longo  
7 2910 North 44th Street, Suite 310  
8 Phoenix, AZ 85018

9 **COPY** of the foregoing mailed or  
10 hand-delivered 24<sup>th</sup> day of June, 2010 to:

11 Lewis Kowal, Administrative Law Judge  
12 Office of Administrative Hearings  
13 1400 West Washington Street, Suite 101  
14 Phoenix, AZ 85007

15 Erin O. Gallagher, Assistant Attorney General  
16 Office of the Attorney General  
17 1275 West Washington Street  
18 Phoenix, AZ 85007

19 Robert Charlton, Assistant Superintendent  
20 Mike McGrane, Senior Examiner  
21 Arizona Department of Financial Institutions  
22 2910 North 44th Street, Suite 310  
23 Phoenix, AZ 85018

24 **COPY** of the foregoing mailed Certified,  
25 Return Receipt this 24<sup>th</sup> day of June, 2010 to:

26 Michael P. Kehoe, President  
New Land Title Agency, L.L.C.  
20830 N. Tatum Blvd., Ste. 250  
Phoenix, AZ 85050  
Petitioners

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